



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Position of Trust

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ADP Case No. 15-00623

Appearances

For Government: Charles C. Hale, Esquire
For Applicant: *Pro se*

02/23/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. Applicant responded to the SOR on February 12, 2016, and requested a determination based on the written record.

On April 6, 2016, the Government issued a File of Relevant Material (FORM) that contained six attachments. Applicant timely responded with additional documentation. The case was assigned to me on February 15, 2017. Based on my review of the file, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 52-year-old claims processor who has worked for the same entity since September 2002. Married, she has two adult sons and an adult stepdaughter.

Applicant has earned a high school diploma. She disclosed sufficient information in her application for position of trust eligibility to indicate she has delinquent debt.

In 2010, Applicant's husband lost his job. He took a lower paying position in order to secure another position. In 2011, Applicant was injured in an automobile accident that caused her to be out of work from April 2011 through July 2011. These two incidents led to Applicant's acquisition of the delinquent debt at issue. That debt consists of 24 delinquent account balances amounting to approximately \$32,450.

Applicant admitted responsibility for the debts noted in the SOR at allegations 1.a, 1.b, 1.e, 1.n, 1.o, 1.p, 1.q, 1.v, 1.w, and 1.x. In sum, these debts represent about \$14,386 in delinquent debt.¹ She denied the remaining allegations, which amount to about \$18,064. She denied responsibility for those debts, at least in part, because they no longer appear on her credit report.

In response to the FORM, Applicant wrote only "no change" to FORM allegations 1.a, 1.c, 1.d, 1.f, 1.i, 1.j, 1.k, 1.r, 1.t, and 1.u. The debts noted in these allegations represent outstanding account balances of \$12,244, \$920, \$408, \$265, an unspecified charged off account balance, an unspecified charged off account balance, an unspecified charged off account balance, \$393, \$787, and \$159, respectively. Regarding the remaining accounts, she noted the following in her FORM response:

1.b – Debt for charged off 2009 account balance of \$1,108. Applicant wrote "Paid \$107.63 by check, no other statement has been received." As evidence, she provided a copy of a transacted check for the amount paid to an entity with the same account number as noted in the FORM credit reports for the lender noted in the SOR. (Ex. B) No other information is provided.

1.e – Debt for \$268 medical balance from 2015. Applicant wrote that she has "been paying \$10 on this account . . . since February [sic] balance was \$268 as of today balance is \$230." She provided evidence of three monthly payments: one undated (\$18.59) and one each from March 2016 (\$10) and April 2016. (\$10). (Ex. E)

1.g-1.h – Two debts for \$140 each. Applicant wrote that she spoke to a representative for the collection entity and was told that the debts are no longer in collection. She called the hospital provider and was told it no longer had information on the account. No corroborative documentary evidence, however, was submitted.

1.i – Debt for collection balance of \$817. Applicant wrote that she spoke with a representative from this collection entity when she did not recognize the delinquent debt cited in the SOR. She was told by the entity that no debts were recorded under her name or Social Security number. She was told that if she had owed a balance to the group listed as the originating debt holder, she would have received a letter. Applicant provided no corroborative documentary evidence to this effect.

¹ The main debt here is the one cited at allegation 1.a. It is for a voluntary car repossession (\$12,244).

1.m – Debt for a collection balance of \$610. In her FORM response, Applicant provided an April 21, 2016, letter noting that the debt had been satisfied in full. (Ex. M)

1.n-1.p – Debts for medical account balances in collection in the amounts of \$260, \$78, and \$49, respectively. Applicant provided documentary evidence that she has paid \$10 a month for three months on each of these accounts. (Exs. N-P)

1.q – Debt for medical collection account for \$35 balance. Applicant provided documentary evidence that she paid \$35 to this entity. (Ex. Q)

1.s – Debt for medical collection for \$881 balance. Applicant wrote: “I’ve called several times, no one has any information on the account”

1.v – Debt for medical collection for \$112 balance. Applicant wrote: “Have never received anything from them after phone call was made”

1.w – Debt for medical collection for \$75 balance. Applicant wrote that she satisfied this balance, but the payment authorization form she submitted as evidence is incomplete and does not reflect that any payment was finalized. (Ex. W)

1.x – Debt for medical collection for \$60 balance. As in her SOR response, Applicant wrote in her FORM response that this balance was paid, but no documentary evidence reflecting the transaction was offered.

In addition, Applicant provided evidence that she has been making payments on four additional debts – three medical accounts with balances of \$886, \$144.42, \$2,558.11, and a recently satisfied account with a balance of \$136.61. (see Exs. A-1 - A-4)

As of the time of her 2012 interview, Applicant had no other accounts over 90-days past due. She has never had a financial judgment filed against her or had her wages garnished. In her interview, it is relayed that while she is presently capable of meeting her monthly financial obligations, “[s]ubject does not feel that she can afford to resolve these debts.”² There is no documentary evidence indicating she has received financial counseling or currently maintains a budget. Her plan going forward is unclear.

Policies

When evaluating an applicant’s suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to sensitive information

² FORM, Item 4 at 9. Although it is unclear whether Applicant was afforded the opportunity to review the interview report, it is noted that she was provided a copy in the FORM and noted no disagreement with the report’s contents.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision."

A person who seeks a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

Here, the Government introduced credible evidence showing Applicant was delinquent on multiple accounts amounting to about \$32,450 in debt.³ This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these financial concerns:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

³ The balances owed on the debts noted in the SOR at 1.i-1.k are unknown and cannot be calculated as part of this sum.

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's 2011 accident led to her lack of work for several months and need for medical care. Combined with her husband's loss of employment in 2010, it can be determined that circumstances beyond the couple's control led, at least partially, to their acquisition of delinquent debt. There is scant evidence, however, as to what, if any, measures Applicant took at the time that would show she acted reasonably in the face of these setbacks. At best, AG ¶ 20(b) applies in part.

Due to a lack of corroborating documentary evidence, Applicant's correspondence concerning telephone calls she had with some creditors cannot be verified. Therefore, little credit can be given to the information provided regarding the debts noted at SOR allegations 1.g, 1.h, 1.i, 1.s, and 1.v. She has, however, provided documentary evidence reflecting payments of about \$108 toward 1.b, \$38 toward 1.e, \$610 satisfying the debt noted at 1.m, about \$90 toward 1.n-p, and \$35 satisfying the debt noted at 1.q.⁴ Combined, these payments amount to almost \$900 toward the \$14,386 for which she has admitted financial responsibility out of the \$32,450 in delinquent debts at issue.

Applicant's payments toward her delinquent debts seem to be more random than orchestrated. There is no evidence of financial counseling and no articulation of a reasonable strategy for addressing her delinquent debts. Indeed, she told investigators that she does not feel that she can afford to resolve these debts. Without some evidence regarding her current budget and other financial information, it is difficult to review her present financial fitness. It is noted, however, that the delinquent debt at issue seems to be contained. Given the years since her accident and the random nature of her progress thus far, however, her minimal progress underscores her own assessment that she

⁴ It is noted, however, that these delinquent debts (1.n-1.p) regarding which Applicant provided documentary evidence of three monthly payments of \$10 each, while notable, would generally fail to reflect an established pattern of on-going repayment. In light of the ultimate disposition in this matter, however, credit is given for initiating repayment in 2016 on these delinquent debts.

cannot afford to resolve these debts. Under these facts and circumstances, none of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 52-year-old claims processor who has worked for the same company for over 14 years. She is married. She has two grown sons and a grown stepdaughter. A high school graduate, she disclosed that she had financial issues on her application for position of trust. The origin of the approximately \$32,450 debt at issue dates back to her husband's loss of a job in 2010 and a 2011 car accident that left Applicant injured, out of work for about four months, and in need of medical care.

As of 2016, little progress had been made on the delinquent debt at issue. She provided documentary evidence that the \$610 and \$35 balances on the debts cited at allegations 1.m and 1.q, respectively, have been satisfied. She also provided documentation regarding relatively nominal payments on a few other debts at issue, although those efforts seem to have been made independent of established repayment plans. Although she apparently now lives within budget and has contained the delinquent debts at issue, she admits she cannot presently afford to address them. While financial counseling could greatly benefit Applicant, both overall and in terms of the debts at issue, it has not been received.

This process does not require an applicant to address all debts at issue. It does, however, demand that an applicant articulate a workable plan to address her delinquent debts, show that her plan has been successfully implemented, and provide evidence that her financial outlook has improved. Here, it is clear Applicant simply lacks the income to address the debts at issue, despite her desire to do so. This does not reflect poorly on Applicant as a person, but rather on her current economic situation. Although Applicant has provided some evidence of progress, she failed to present a workable plan going forward for resolving her delinquent debt and employing safeguards to minimize the likelihood she will again acquire significant delinquent debt. Based on the documentary evidence submitted, I find financial considerations concerns remain unmitigated. Consequently, eligibility for a public trust position is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraphs 1.m-1.q:	For Applicant
Subparagraphs 1.r-1.x:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to permit Applicant to maintain a public trust position. Eligibility for a public trust position is denied.

Arthur E. Marshall, Jr.
Administrative Judge